

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRY L. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Coppel, Tex.

*Docket No. 97-609; Submitted on the Record;
Issued December 14, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in denying appellant's request for review of the merits of his claim.

On January 1, 1995 appellant, then a 36-year-old janitor, filed an occupational disease claim, Form CA-2, alleging that he sustained mental illness in January 1992 when he was told his job was not important and seven months later he received a proposal of removal from his job. He was terminated in October 1992. Appellant submitted evidence to support his claim. By decision dated November 1, 1995, the Office denied the claim stating that the evidence failed to establish that the claimed injury occurred in the performance of duty.

In an undated letter received by the Office on December 20, 1995, appellant requested reconsideration of the decision and submitted a letter dated September 23, 1995 in which Dr. James Kelley signed that he concurred that appellant was eligible for disability retirement, a report from Dr. Earl T. Patterson, a psychologist, dated December 13, 1995 and a letter from Congressman John Bryant dated May 26, 1992. In his December 13, 1995 report, Dr. Patterson diagnosed major depressive episode resulting mainly from the loss of appellant's job but also from disagreements with his supervisors regarding the quality of his work, medical conditions and leave status.

By decision dated December 21, 1995, the Office denied appellant's reconsideration request.

On July 24, 1996 appellant requested reconsideration of the decision. In support of his request, appellant submitted documents, notes and letters from management or witnesses pertaining to some of the issues that allegedly caused him stress including copies of leave

requests and descriptions of the nature of the work he was required to do, such as, his supervisor's request for him to wash windows or sweep or mop the floors. The only new medical evidence appellant submitted was a report from Dr. Patterson, a psychologist, dated July 23, 1996 in which Dr. Patterson opined that the administrative decisions by appellant's supervisor which led to appellant's removal from his job were a psychological stressor and caused appellant's depression. Additionally, appellant submitted the first page of a letter dated January 25, 1996 from Congressman Bryant to the Clerk of the Board.

By decision dated August 2, 1996, the Office denied the reconsideration request.

On October 12, 1996 appellant requested reconsideration of the decision. To support his request appellant submitted evidence pertaining to his claim which he had previously submitted or which contained duplicative information except for a report from Dr. Patterson dated October 21, 1996, an excerpt from a building services training program, and instruction sheets on how his job should be performed. In his October 21, 1996 report, Dr. Patterson opined that appellant's employment caused a major depressive episode in that appellant was told his job was not important, he became insecure about his job performance, he was asked to work overtime, and he was asked to perform work which exceeded his restrictions for his eye and hand injuries.¹

By decision dated November 8, 1996, the Office denied appellant's reconsideration request.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.³ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵ Evidence that does not address the particular issue involved, in this case whether appellant established that his emotional condition is work-related, does not constitute a basis for reopening the case.⁶

¹ Appellant filed two claims in addition to the claim addressed in this appeal, one for an eye condition, No. 160215000, and one for a ganglion cyst on his hand, No. 160210411. Both claims were denied.

² 5 U.S.C. § 8101 *et seq.*

³ 20 C.F.R. § 10.138(b)(1) and (2).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁶ *Richard L. Ballard*, *supra* note 5 at 150; *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).

In the present case, the evidence appellant submitted in support of his December 20, 1995 and July 24 and October 12, 1996 requests for reconsideration are either duplicative of evidence previously submitted or are not relevant to appellant's claim. The December 13, 1995, July 23 and October 21, 1996 reports of Dr. Patterson are not relevant because appellant did not establish any compensable factors of employment and therefore his reports do not contain a medical rationale addressing how appellant's emotional condition resulted from factors of his federal employment.⁷ The handbook with work instructions, Dr. Kelley's September 23, 1995 letter approving appellant for disability retirement, and the May 26, 1992 and January 25, 1996 letters from Congressman Bryant are not relevant as they do not address causation.

Appellant has not established that the Office abused its discretion in its December 21, 1995 and August 2 and November 8, 1996 decisions denying his request for a review on the merits of its November 1, 1995 decision under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law or advanced a point of law or fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

The decisions of the Office of Workers' Compensation Programs dated November 8 and August 2, 1996 and December 21, 1995 are hereby affirmed.

Dated, Washington, D.C.
December 14, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁷ See *June A. Mesarick*, 41 ECAB 898, 908 (1990); *Sharon R. Bowman*, 45 ECAB 187, 195 (1993)